

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JANET TOKARCZYK,

Plaintiff,

v.

Case No. 08-12481  
Honorable Patrick J. Duggan

A.G. EDWARDS & SONS, INC. and  
WACHOVIA SECURITIES LLC,

Defendants.

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ROBERT N. TOKARCZYK, Personal  
Representative of THE ESTATE OF ROBERT  
TOKARCZYK, Deceased

Intervening Plaintiff,

v.

JANET TOKARCZYK,

Cross-Defendant.

\_\_\_\_\_/

**ORDER**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on March 2, 2009.

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

This lawsuit involves a dispute between Robert N. Tokarczyk, as personal representative of the estate of his late father Robert Tokarczyk ("Estate"), and Plaintiff Janet Tokarczyk over proceeds in two A.G. Edwards & Sons Individual Retirement

Accounts. The Estate and Plaintiff have filed cross motions for summary judgment, which are currently pending before the Court.

The Estate filed its motion for summary judgment on December 29, 2008. On January 20, 2009, Plaintiff filed a response and cross motion for summary judgment. Several days later, however, on January 28, 2009, Plaintiff filed a motion for leave to file a response brief in excess of twenty pages and a second response and cross motion. In her second response and motion, Plaintiff raises arguments under the Employee Retirement Income Security Act (“ERISA”) that she did not raise in her first response and motion.

The Estate has moved to strike Plaintiff’s second response brief, arguing that it was untimely and added arguments not raised in her original response brief. (Doc. 30.) The Estate further argues that it has been prejudiced by the late filing of the response brief, “as it did not have ample time or space (given reply page limitations) to respond to the new issues raised.” Therefore, if the Court declines to strike Plaintiff’s second response brief, the Estate requests that it be allowed time to file an additional reply brief.

After the Estate filed its motion to strike, Plaintiff filed another brief to alert the Court of the Supreme Court’s January 26, 2009 decision in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, – U.S. –, 129 S. Ct. 865 (2009), which Plaintiff believes controls the outcome of the present dispute. The Estate has moved to strike this filing as well (Doc. 35), arguing that it is untimely and constitutes a third response to its motion.

The Court denies the Estate's requests to strike Plaintiff's second response and cross motion for summary judgment and brief containing supplemental authority. The Court granted Plaintiff's motion to file the second response and it believes parties have an obligation to alert the courts of relevant cases decided after motions are otherwise fully briefed. The Court believes, however, that the Estate should have the opportunity to respond to the additional arguments raised in Plaintiff's second response and cross motion and the *Kennedy* decision. Thus the Estate may file such a response, if it still wishes to do so, within ten (10) days from the date of this order. The rules pertaining to response briefs, Eastern District of Michigan local Rule 7.1(c), shall apply to the Estate's supplemental pleading. Within seven (7) days after service of the Estate's response, Plaintiff may file a "reply" brief, not exceeding five (5) pages.

**SO ORDERED.**

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:  
Edwin Young, Esq.  
Kenneth F. Neuman, Esq.  
Gary Saretsky, Esq.